IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FREDDIE BALL, Plaintiff, v. THE SKULL X ROSE TATTOO COLLECTIVE LLC, and IAN CHRISTOPHER, individually, Defendants.	No. 13-cv-2288-SHL-dkv

ORDER DISMISSING CASE FOR FAILURE TO PROSECUTE

On July 2, 2015, the Court issued an Order to Show Cause that required Plaintiff to demonstrate within 11 days of the entry of the order why his cause of action should not be dismissed, with prejudice, for failure to prosecute. (ECF No. 27.) Plaintiff has not responded to the Order to Show Cause and the time to do so has passed.

"The authority of a federal trial court to dismiss a plaintiff's action with prejudice because of his failure to prosecute cannot seriously be doubted." Link v. Wabash R. R. Co., 370 U.S. 626, 629 (1962). "The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts." Id. at 629–630.

The Sixth Circuit considers four factors in reviewing the decision of a district court to dismiss a case for failure to prosecute:

> (1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Wu v. T.W. Wang, Inc., 420 F.3d 641, 643 (6th Cir. 2005) (citing Knoll v. Am. Tel. & Tel. Co., 176 F.3d 359, 363 (6th Cir. 1999)).

Each of the factors in Wu recommends dismissing this case, with prejudice. While the nature of Plaintiff's failure to prosecute is not clear, he is clearly at fault. Defendant has been prejudiced by Plaintiff's inaction, as it has exerted time and resources in defending the case. Plaintiff was warned that a failure to respond to the Order to Show Cause may result in dismissing the case with prejudice. Finally, while less drastic measures were not considered, the Order to Show Cause gave Plaintiff ample time to avoid a dismissal of the case with a less drastic sanction.

For the foregoing reasons, Plaintiff's claims against Defendant are DISMISSED WITH PREJUDICE.

IT IS SO ORDERED, this 20th day of July, 2015.

s/ Sheryl H. Lipman
SHERYL H. LIPMAN
UNITED STATES DISTRICT JUDGE